

December 13, 2016

Via Electronic Delivery

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Telephone Number Portability, et. al.,
WC Docket Nos. 07-149 and 09-109; CC Docket No. 95-116**

Dear Secretary Dortch:

The North American Portability Management LLC (the "NAPM LLC"), by its attorneys, writes to provide further context for the letter filed by Neustar in the above-referenced dockets on December 2, 2016 (the "Neustar Letter") and the *Number Portability Administration Center Transition Status Report* filed by Neustar in the same dockets on November 18, 2016 (the "Report"). The Neustar Letter is a response to a letter filed by the NAPM LLC in the above-referenced dockets on November 29, 2016 (the "NAPM Letter"). The NAPM Letter pointed out that it was not reasonable for Neustar to file a report concluding that the transition likely will not be completed until sometime in 2019 because Neustar has not received certain information, particularly because Neustar is to blame for its lack of access to that information. In response, Neustar alleges that outside counsel for the NAPM LLC¹ "ignored the opportunity" to "acknowledge and address the issues identified" in the Report and "instead offered a series of false accusations and ad hominem attacks."² However, the NAPM Letter did not contain any false accusations or *ad hominem* attacks, and the NAPM LLC and the Transition Oversight Manager (the "TOM") have reviewed the potential issues discussed in the Report and continue to mitigate these and other transition risks as appropriate.

Each of the statements in the NAPM Letter is accurate. Over one year ago, the TOM made an electronic portal available to iconectiv, Neustar and the NAPM LLC in order to facilitate the exchange of transition-related information. The TOM asked the parties to sign a non-disclosure agreement ("NDA") before receiving access to the portal. Although iconectiv promptly signed the NDA, Neustar refused. The NAPM LLC sought to negotiate a resolution of this impasse, but the parties have been unable to reach agreement. The refusal by Neustar to sign the portal NDA makes the exchange of information inefficient and impedes productivity. Nonetheless, the NAPM LLC, the TOM and iconectiv believe that Neustar is obligated by the FCC's orders and the master services agreements between the NAPM LLC and Neustar ("MSAs") to protect confidential information exchanged between and among iconectiv, Neustar, the TOM and the NAPM LLC to facilitate transition. For this reason, regularly scheduled operational meetings among the TOM and subject matter experts from iconectiv, Neustar and the NAPM LLC ("Joint Vendor Meetings") continued.

¹ For the sake of clarity, all letters filed with the Federal Communications Commission ("FCC") by outside counsel for the NAPM LLC are reviewed, edited and approved by the NAPM LLC, including this letter and the letter filed on November 29, 2016. Although outside counsel certainly agrees with the content of the letters, the letters are filed to express the positions of the NAPM LLC rather than the personal views of outside counsel. The NAPM LLC will assume the same is true with respect to letters filed by outside counsel for Neustar unless corrected otherwise.

² Neustar letter at 1.

During a telephonic Joint Vendor Meeting on May 19, 2016, Neustar invited its outside counsel to attend, which was the first time any party had invited outside counsel to a Joint Vendor Meeting. The invitation of outside counsel to an operational meeting between subject matter experts prompted a discussion about confidentiality. During this conversation, Neustar repeatedly, and unambiguously, stated that Neustar had absolutely no legal obligation to maintain the confidentiality of any information exchanged during any Joint Vendor Meeting because Neustar had not signed the portal NDA or any other NDA. These repeated statements were heard by multiple parties, including multiple representatives from the NAPM LLC, the TOM, and iconectiv. As a direct result of the assertion by Neustar that it had no legal obligation to protect any information exchanged during Joint Vendor Meetings, all of the other parties became very concerned, and the meeting was ended so that appropriate confidentiality protections could be implemented.³

In light of Neustar's claim that it is under no obligation to protect the confidentiality of information exchanged during Joint Vendor Meetings, the NAPM LLC sought to reinstate negotiations regarding an NDA with Neustar to protect information exchanged at Joint Vendor Meetings. As explained in the NAPM LLC letter, Neustar to date has refused to sign a reasonable NDA. The primary obstacle to reaching agreement regarding an NDA continues to be Neustar's insistence on the inclusion in the NDA of two non-standard exclusions to the definition of "Confidential Information."⁴ The first non-standard exclusion proposed by Neustar would exclude information deemed **by the party receiving the Confidential Information** (e.g., Neustar) reasonably necessary to factually correct public statements that are false or misleading or omissions regarding material facts relating to the transition.⁵ Neustar has made clear that it intends this exclusion to cover **any** public statement made by **any** person or entity, even if the public statement were made by a person or entity that is not a party to the NDA, and even if none of the other parties to the NDA, or even presumably the FCC, agree that the public statement at issue is false or misleading.

This non-standard exclusion is unnecessary and unreasonable. To the extent information has been disclosed by any party, even if the disclosure about the information is misleading or inaccurate, the information at issue no longer constitutes "Confidential Information" under the NDA, and thus any other party, including Neustar, can make any truthful statements about such information without violating the NDA. Accordingly, if any party issues a public statement that is false or misleading about specific information, Neustar could choose to correct the statement by discussing that same information. It is also unreasonable for a party to an NDA to insist on having the unilateral right to disclose confidential information to prove its position regarding a specific issue. For example, Neustar has made it clear that it disagrees with the transition schedule, claiming in the Report, for example, that the transition schedule is too optimistic. Although the TOM and the NAPM LLC have made it clear that the transition schedule

³ Neustar has, from time to time, blamed the ending of the May 19, 2016 Joint Vendor Meeting on outside counsel for the NAPM LLC. This is untrue. Neustar was the only party to invite outside counsel to the Joint Vendor Meeting. When Neustar repeatedly stated that it had no obligation under law to maintain the confidentiality of information exchanged during Joint Vendor Meetings, the TOM, iconectiv and the NAPM LLC rightfully became concerned about continuing to disclose confidential information during that Joint Vendor Meeting. For this reason, when called by the NAPM LLC, outside counsel for the NAPM LLC suggested that the call be ended until the matter of exchanging confidential information could be resolved by the attorneys for the various parties.

⁴ To the extent a specific type of information is excluded from the definition of "Confidential Information" in an NDA, the information is not subject to the protections of the NDA. For this reason, the scope of exclusions is a critical issue for any NDA. However, most NDAs contain variations of a standard set of exclusions, and negotiations rarely stall over NDAs that contain variations of these standard exclusions. Indeed, the NDA that Neustar itself proposed for other parties contained the standard exclusions. Unfortunately, Neustar has refused to accept the same exclusions that it has proposed for other parties.

⁵ Until recently, Neustar had written this exclusion to cover any false or misleading statements or omissions about Neustar generally – rather than just the transition itself.

would be adjusted from time-to-time as necessary to mitigate risks, the TOM, the NAPM LLC, and iconectiv do not agree with Neustar that the transition schedule is currently inaccurate. When the NAPM LLC has repeatedly asked Neustar whether it intended to use its proposed non-standard exclusion to release confidential information in order to “prove” its position that the transition schedule is too optimistic, Neustar has refused to provide an answer, which is particularly disturbing since Neustar, as the incumbent LNPA, has the natural incentive to disrupt or delay the transition.

In short, the first exclusion would create a vehicle by which a party who has the incentive to disrupt or delay the transition could legally disclose as much confidential information as it deems necessary, in its sole discretion, to “prove” its point, even if every other party to the NDA disagrees with that point. Neustar alludes in the Neustar Letter that it has offered to limit this particular exclusion by agreeing not to disclose information pursuant to this specific exclusion if it is the trade secret of another party or if it relates to national security related obligations imposed on a party. An agreement by Neustar not to disclose security requirements that have been imposed by the FCC upon iconectiv is very different from an agreement by Neustar not to disclose information that could create a security risk for the transition or the Number Portability Administration Center (“NPAC”). Neustar has consistently rejected proposals by the NAPM LLC to prohibit the disclosure of confidential information when such disclosure could create, or increase, the risk of disruption to, or delay of, the transition.

The second exclusion proposed by Neustar would exclude a broad set of information relating to testing and any products or services offered by the parties. Although progress has recently been made with respect to this exclusion, the NAPM LLC believes that it is inappropriate to address this issue in this NDA as an exclusion to the definition of “Confidential Information.” Neustar would receive the type of information that Neustar legitimately needs to share with its customers directly from iconectiv pursuant to the terms and conditions of an agreement with iconectiv. This NDA would have no impact on Neustar’s ability to use the information it receives from iconectiv pursuant to Neustar’s agreement with iconectiv, because this NDA does not cover any information lawfully received from a third party. As an accommodation to emphasize this point, the NAPM LLC has offered to include a statement in the NDA that any information received from iconectiv and used in accordance with the terms and conditions of the agreement with iconectiv would be deemed to be used with the prior written consent of iconectiv for the purposes of this NDA. However, it would be inappropriate to create an additional right for Neustar to share information it receives solely due to its role as the incumbent LNPA with its customers, because this would give Neustar an unfair competitive advantage over all other service providers who do not have access to this same information.

Joint Vendor Meetings are not possible as a direct result of Neustar’s claim that it has the right to disclose confidential information it receives during Joint Vendor Meetings attended by iconectiv, the TOM and the NAPM LLC. Until this matter is resolved, the only means for providing Neustar with confidential information is to channel it through the NAPM LLC or the TOM.

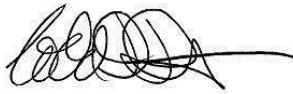
The NAPM LLC continues to believe that Neustar remains obligated by the FCC’s orders and the MSAs to protect confidential information exchanged among iconectiv, Neustar, the TOM and the NAPM LLC to facilitate transition. Nonetheless, considering Neustar’s unambiguous and repeated repudiation of this obligation, the NAPM LLC believes that the execution of an NDA would be the best means for all parties to reach a common understanding about their respective obligations. Until an NDA is signed, the NAPM LLC cannot reasonably assume that confidential information can be exchanged during Joint Vendor Meetings among iconectiv, Neustar, the TOM and the NAPM LLC to facilitate transition. For this reason, Neustar’s actions have forced all confidential information to be shared with Neustar via the TOM and the NAPM LLC during one-on-one meetings and communications rather than during Joint Vendor Meetings so that the NAPM LLC can leverage the confidentiality protections of the MSA. As stated earlier, this process is inefficient and it adds unnecessary costs to the transition process that are borne by the industry.

The NAPM LLC again respectfully urges Neustar promptly to sign an NDA without insisting on the two non-standard provisions discussed in this letter. The parties have reached agreement in principle with

respect to the other terms, and the standard exclusions provide Neustar with more than enough protection for its interests. Continued insistence on non-standard, unilateral rights to disclose confidential information would be fundamentally inconsistent with good faith cooperation, the requirements of the relevant FCC orders and the MSAs with the NAPM LLC, and the vital need to protect the NPAC, which is "a national resource that provides critical inputs to communications services, public safety, and law enforcement."⁶

Please direct any questions to the undersigned.

Sincerely,



By: Todd D. Daubert, Partner
Outside Counsel to the NAPM LLC

⁶ *In the Matter of Implementation of Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration; Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management; Telephone Number Portability*, WC Docket Nos. 09-109, 07-149, CC Docket 95-116, Order, 30 FCC Rcd 3082, ¶158 (2015) (LNPA Selection Order).